



New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

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Important Notice

RETAIL DEALERS OF FUEL AND CIGARETTES LOCATED ON INDIAN RESERVATIONS

The United States Supreme Court decision in Department v. Mihelme Attia & Bros., Inc., 512 US ___, 114 S Ct 2028 (June 13, 1994) upheld the validity of the New York State Tax Department's rules for sales of motor fuel, diesel motor fuel and cigarettes on Indian reservations.

Effective April 1, 1997, only Indian nations and tribes and persons who are *registered reservation dealers* may purchase untaxed motor fuel, diesel motor fuel and cigarettes for resale on Indian reservations. *Registered reservation dealers* may make tax-free sales of these products on the reservation to Indian nations and tribes or to qualified Indian consumers. A qualified Indian consumer is an enrolled member of an Indian nation or tribe who purchases the product on a reservation for personal use (see listing of qualified Indian nations and tribes, and qualified reservations on page 4 of this notice).

If you become a registered reservation dealer, you are eligible to receive tax exemption coupons (see below for information on this coupon program) needed to purchase untaxed product from a New York state registered distributor of motor fuel or diesel motor fuel or from a licensed cigarette agent. The product must be delivered to your reservation location. (A list of state-licensed distributors or agents may be obtained by contacting the Tax Department at the telephone number and address shown at the end of this notice.)

When to Register

Beginning in February, the Tax Department will register vendors wishing to become registered

reservation dealers. To ensure that you receive the tax exemption coupons needed to make untaxed purchases on April 1, 1997, submit a properly completed Form AU-12, Application for Registration as a Registered Reservation Dealer, no later than March 15, 1997.

Who Should Register as a Dealer

You must be registered by the tax department as a reservation dealer to purchase untaxed motor fuel, diesel motor fuel or cigarettes for resale on Indian reservations to qualified Indian consumers, to other registered reservation dealers or to Indian nations or tribes.

Once registered, you will receive a *Certificate of Registration as a Reservation Dealer* and may subsequently get *Tax Exemption Coupons for Registered Reservation Dealers*, authorizing untaxed purchases. Any change of name or address of the individual, partnership or corporation and any change of officers or directors, or of their addresses must be reported within 30 days on Form AU-12, *Application for Registration as a Registered Reservation Dealer*.

Effective April 1, 1997, licensed agents, registered distributors and other suppliers will not be allowed to sell untaxed product to vendors who are not registered with the state Tax Department, regardless of other tribal, state or federal licenses held by the vendor. Failure to comply with this requirement may subject the supplier or the vendor to liability for tax and the imposition of civil or criminal sanctions, including penalty assessment, loss of product and suspension or revocation of any license or

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registration. You can get a list of these state-licensed distributors or agents by contacting the Tax Department at the telephone number and address shown at the end of this notice.

Taxable Sales and Purchases

Any motor fuel, diesel motor fuel or cigarettes purchased for resale to a non-Indian or nonqualified Indian must be purchased on a state tax-paid basis.

If you make sales to non-Indian or nonqualified Indian consumers, you must also be registered with the Tax Department as a sales tax vendor. As a dealer selling to non-Indian or non-qualified Indian consumers, you must collect and remit the applicable state and local sales tax for your area. If you do not know the applicable tax rate, you may contact the Tax Department at the telephone number listed at the end of this notice.

Limitations on Untaxed Product Available for Sale

The quantity of untaxed product that a registered reservation dealer may purchase is based upon a determination of the probable consumption of the product by qualified consumers on each reservation. Each month the Tax Department, either alone or with the participation of nation or tribal governments, will distribute the allocation for each reservation among registered reservation dealers by means of tax exemption coupons, as described below.

Tax Exemption Coupons: How a Registered Reservation Dealer Gets Untaxed Product

Each month, registered reservation dealers will receive tax exemption coupons for registered reservation dealers from the Tax Department entitling them to purchase motor fuel, diesel motor fuel and cigarettes on which the applicable state taxes have not been paid.

Coupons are not transferable. Only the registered reservation dealer named on the coupon may

purchase untaxed product with it. Moreover, delivery must be made to the locations indicated on the coupon. Therefore, it is extremely important for you to properly complete the registration application and notify the Tax Department using Form AU-12 if changes occur.

The amount of untaxed product purchased by a registered reservation dealer may not exceed the amount preprinted on the coupon. If a registered reservation dealer purchases product in excess of the preprinted amount indicated on the coupon, it will be presumed that the excess product is for resale to non-Indian or nonqualified Indian consumers. Therefore, the sale of this excess product to a registered reservation dealer is subject to all applicable taxes.

Sales of product to persons not registered with the Tax Department, sales not supported by a properly completed tax exemption coupon, or sales made in excess of the preprinted amount indicated on the coupon are presumed to be sales that are not exempt under this system. If any of these sales are made on an untaxed basis, both the supplier and the dealer jointly have the burden of proving that the subsequent retail sale of the untaxed product was properly made to qualified Indian consumers. Failure to comply with this requirement may subject the supplier or the dealer to liability for tax and the imposition of civil and criminal sanctions, including penalty assessment, loss of product and suspension or revocation of any license or registration.

To purchase untaxed product from a supplier, the registered reservation dealer must properly complete the tax exemption coupon (Form AU-14) and issue it either before or at the time of delivery of the product. The registered reservation dealer issues the department copy (white) and the supplier copy (pink) to the supplier, and retains the dealer copy (yellow) for its records.

The registration number of the reservation dealer and the applicable coupon numbers must be given to the supplier prior to shipment, and must be recorded on the supplier's manifest, invoice,

delivery ticket, or other transportation document.

As a general rule, tax exemption coupons will be issued in denominations of 1000 gallons of fuel or 300 packs of cigarettes. However, the registered reservation dealer may request that the coupons be issued in a different amount to reflect normal delivery quantities to the dealer.

If sales to qualified consumers should deplete the registered reservation dealer's monthly allocation of untaxed product, and the dealer needs additional tax exemption coupons to meet the demand of qualified Indian consumers, the dealer should contact the Tax Department as soon as possible.

Tax Exempt Sales to Indian Consumers

When a registered reservation dealer makes tax exempt sales of motor fuel, diesel motor fuel or cigarettes to a qualified Indian consumer for personal use (and not for resale), the registered reservation dealer must maintain a log of each tax-exempt sale which includes the following information:

- date sold
- name and address of the purchaser
- reservation where product is delivered to purchaser
- type and quantity of product sold
- total sales price
- any other pertinent information which would substantiate the exempt sale

Under this system, the registered reservation dealer should also get a Form DTF-801, *Certificate of Individual Indian Exemption*, or other supporting documentation establishing the purchaser's identity at the time of initial purchase.

Refund Provisions

In the unlikely event that sales to qualified consumers should deplete the registered reservation dealer's monthly allocation of untaxed product, the dealer may use its tax-paid supply of product to complete a sale. In that event, the registered reservation dealer may apply for a refund (subject to substantiation) of the state taxes paid. To get refund applications, call

the Tax Department at the telephone number listed at the end of this notice.

In the event a qualified Indian consumer purchases product on a reservation upon which the dealer erroneously passes through the state taxes, that consumer is entitled to a refund of taxes paid. To substantiate a claim for refund, the purchaser must get from the vendor a receipt or other document indicating the name and address of the vendor, and the amount and type of New York state tax paid and erroneously passed through to the consumer.

Transfers to Other Registered Reservation Dealers Located on the Same Reservation

Registered reservation dealers may make transfers of untaxed product to other registered reservation dealers located on the same reservation. To substantiate the transfer to another registered reservation dealer, you must record the transfer in your log of exempt sales, indicating all the pertinent data indicated above, including the other registered reservation dealer's identification number. The dealer receiving the product need not issue a tax exemption coupon.

Tax-Exempt and Untaxed Sales to Indian Nations

When a registered reservation dealer makes a tax-exempt sale of motor fuel, diesel motor fuel or cigarettes to an Indian nation or tribe for the nation's or tribe's use and not for resale, the dealer should enter the sale in the log as described above. In addition, the dealer should have on file a properly completed Form FT-939, *Certificate of Tax Exemption for Qualified Indian Nations or Tribes on Purchases of Motor Fuel, Diesel Motor Fuel and Cigarettes*, to substantiate the exempt status of the sale. The sale may also be substantiated by a purchase order containing similar information and certification on nation or tribal stationery.

Untaxed sales of product to nation or tribal owned and operated businesses for resale to Indian consumers, however, are to be treated as sales to another registered reservation dealer. Therefore, such sales should be recorded in your log of exempt sales

with all the pertinent data described above, including the nation or tribal enterprise's registration identification number.

Record-Keeping Requirements

Registered reservation dealers are required to maintain accurate records of all taxable and exempt transactions. Failure to comply with this requirement may subject the dealer to assessment, seizure of product and other penalties (e.g., loss or suspension of the dealer's registration).

Qualified Indian Nations and Tribes and Qualified Reservations

Exempt Indian Nations and Tribes - as defined by state and federal law:

Cayuga

Seneca Nation of Indians

Onelida Indian Nation

Shinnecock

Onondaga Nation of Indians

Tonawanda Band of Senecas

Poospatuck or Unkechaug

Tuscarora Nation of Indians

Saint Regis Mohawk

Qualified Indian Reservations

Allegany Indian Reservation

Saint Regis Mohawk (Akwasasne) Indian Reservation

Cattaraugus Indian Reservation

Oil Spring Indian Reservation

Shinnecock Indian Reservation

Onelida Indian Territory

Tonawanda Indian Reservation

Onondaga Indian Reservation

Tuscarora Indian Reservation

Poospatuck Indian Reservation

Need Help?

For information, forms or publications, call the Business Tax Information Center at 1 800 972-1233. For information, you can also call toll free 1 800 225-5829. For forms or publications, you can also call toll free 1 800 462-8100.

Telephone assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday.

From areas outside the U. S. and Canada, call (518) 485-6800.

Hotline for the Hearing and Speech Impaired - If you have a hearing or speech impairment and have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U. S. and Canada 1 800 634-2110. Hours of operation are from 8:30 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with Disabilities - In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call the information number listed above.

If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.